In the Supreme Court of the United States

OCTOBER TERM, 1971

No. 71-516

JAPE HOLLEY TAYLOR, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

After a jury trial in the United States District Court for the Northern District of Florida, petitioner was convicted of willfully refusing to submit to induction into the Armed Forces, in violation of 50 U.S.C. App. 462(a). He was sentenced to four years' imprisonment. The court of appeals affirmed (Pet. App. A-1), and, on August 10, 1971, denied a petition for rehearing *en banc* (Pet. App. A-11), with four judges dissenting (Pet. App. A-12-A-18). The petition for a writ of certiorari was not filed until October 9, 1971, and is

therefore out of time under Rule 22(2) of the Rules of this Court.

The facts are not in dispute. Petitioner registered with his local board at the age of eighteen, and, on December 4, 1967, he received a student (II-S) deferment as a freshman at California Institute of Technology. He held this classification until November 14, 1968, when, because he had left college and accepted full-time employment, he was reclassified I-A.

On December 16, 1968, petitioner went to his local board and requested a conscientious objector application (SSS Form 150). After looking through the application, he asked the board secretary how literally the board would interpret the statutory language of Section 6(j) appearing on the face of the application (Pet. App. A-19). The secretary replied that such a question must be answered by the board (Tr. 69).[1] She also advised petitioner that he had 30 days within which to return the form executed in full (Tr. 26). Petitioner then stated that he did not feel he could sign the form, to which the secretary replied that there were some young men who couldn't sign it, and some who went to jail (Tr. 69-70). Petitioner took the form home; he never returned it to the board.

On February 17, 1969, the board sent him a notice reminding him that his Form 150 had not been returned; he was advised to return it immediately or sign a statement withdrawing his conscientious objector claim (Tr. 45). Petitioner failed to follow

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[1] "Tr." references are to the transcript of proceedings below, a copy of which is being lodged with the Clerk of this Court.

either course (Tr. 45). He was ordered, on April 24, 1969, to report for induction on May 16, 1969.

On the scheduled reporting date, the board received a letter from petitioner stating that he would refuse induction (Pet. App. A-3 n. 2). In the letter, he informed the board for the first time of his "belief that war is wrong." He explained his failure to return the Form 150 in the following terms: "This form stated that one's moral beliefs and personal philosophy were not sufficient grounds for requesting Conscientious Objector status; only religious opposition was acceptable. For this reason, I was unable to complete and sign this form, which I believe discriminates against me."

Petitioner failed to report for induction as ordered and the present indictment and conviction followed. The court of appeals affirmed (Pet. App. A-1-A-9).

1. Petitioner seeks to overturn his conviction on the ground that he was entitled to conscientious objector status and thus was invalidly ordered for induction. Since he failed to request a I-O classification from his local board prior to the scheduled reporting date,[2] however, the argument of improper classification is not available to him. *McGee* v. *United States,* 402 U.S. 479; and see *United States* v. *McDuffie,* 443 F. 2d 1163 (C.A. 5), certiorari denied, No. 71-5012, October 12, 1971.

Petitioner contends here, as he did below, that he

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[2] As the court below pointed out (Pet. App. A-7-A-8), the information submitted thereafter by petitioner in support of his conscientious objector claim need not be considered by the local board. See *Ehlert* v. *United States,* 402 U.S. 99.

should be excepted from the *McGee* rule because he was misled by Selective Service to believe that a request for conscientious objector status based on other than a "conventional religion" (Pet. 8) would be rejected by the local board. He points specifically to SSS Form 150, which quotes the statutory exemption provision (50 U.S.C. App. 456(j)) in its entirety and contains several questions addressed to the subject of the registrant's "religious training and belief" (Pet. App. A-19-A-22).

At the time that petitioner failed to report for induction, this Court had not decided *Welsh* v. *United States,* 398 U.S. 333. Consequently, the only question properly raised by the petition is whether the questioned form was misleading under *United States* v. *Seeger,* 380 U.S. 163. We think not.

In *Seeger,* this Court dealt with the earlier exemption provision (50 U.S.C. App. (Supp. III) 456 (j)) that limited conscientious objector status to those believing in "a Supreme Being." In construing the statute, the Court stated (380 U.S. at 165): "Congress, in using the expression 'Supreme Being' rather than the designation 'God,' was merely clarifying the meaning of religious training and belief so as to embrace all religions and to exclude essentially political, sociological, or philosophical views." Looking to the legislative history and Congress' reliance on *Berman* v. *United States,* 156 F. 2d 377 (C.A. 9), and *United States* v. *Kauten,* 133 F. 2d 703 (C.A. 2), the Court concluded (380 U.S. at 178):

> Thus, we think that rather than citing *Berman*

> for what it said "religious belief" was, Congress cited it for what it said "religious belief" was not. For both *Kauten* and *Berman* hold in common the conclusion that exemption must be denied to those whose beliefs are political, social or philosophical in nature, rather than religious. Both, in fact, denied exemption on that very ground. It seems more likely, therefore, that it was this point which led Congress to cite *Berman*. . . .

Following *Seeger*, Section 6(j) was amended in 1967 to delete the reference to "Supreme Being," while retaining the exclusion for conscientious objector claims based on "essentially political, sociological, or philosophical views, or a merely personal moral code" (50 U.S.C. App. (Supp. IV) 456(j)).[3] It is this amendment that appears in the conscientious objector form.

Selective Service cannot, we submit, be faulted for continuing after *Seeger* to inquire in SSS Form 150 into a registrant's "religious training and belief." As stated by the Court in that case (380 U.S. at 165-166), "the test of belief * * * is whether a given belief that is sincere and meaningful occupies a place in the life of its possessor parallel to that filled by the orthodox belief in God of one who clearly qualifies for the exemption." "[T]he congressional policy," it added, is to provide "exemption from military service for those whose opposition is based on grounds that can fairly be

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[3] In *Seeger*, the Court said (380 U.S. at 186): "The use by Congress of the words 'merely personal' seems to us to restrict the exception to a moral code which is not only personal but which is the sole basis for the registrant's belief and is in no way related to a Supreme Being."

said to be 'religious' " (380 U.S. at 179-180), whose beliefs "are, in his own scheme of things, religious" (*id.* at 185).

The form in question nowhere suggests that a claim of conscientious objection must be based on a "conventional religion" (Pet. 8). Indeed, it provides the registrant considerable latitude in describing "the nature of your belief" (Series II, quest. 1, Pet. App. A-20), and in explaining "how, when and from whom or from what source you received the religious training and acquired the religious belief which is the basis of your claim" (Series II, quest. 2, Pet. App. A-20). Nor is the questioned form misleading because it includes the statutory definition of "religious training and belief" as not including "essentially political, sociological or philosophical views, or a merely personal moral code" (Pet. App. A-19). As indicated above, this Court did not rule otherwise in *Seeger,* and, until the recent decision in *Welsh,* such views were generally considered to be outside the scope of the statutory exemption. See *Welsh* v. *United States, supra,* 398 U.S. at 345 (Harlan, J., concurring).

If, therefore, petitioner was indeed "misled," as he claims, we agree with the court below that the fault lay not with the conscientious objector form, but was due instead to the fact that petitioner "unilaterally decided on uncounselled, subjective information that he could not qualify" (Pet. App. A-4). See *United States* v. *Powers,* 413 F. 2d 834, 837 (C.A. 1); *United States* v. *Yoha,* 445 F. 2d 816 (C.A. 9).[4] That is not the type of

[4] As pointed out by the court below (Pet. App. A-5), petitioner "made no real effort to ascertain the actual requirements for the

unusual circumstance preventing the registrant from exercising his rights that warrants a relaxation of the exhaustion doctrine enunciated in *McGee*. Compare *United States* v. *Davis*, 413 F. 2d 148 (C.A. 4); *Edwards* v. *United States*, 395 F. 2d 453, 454 (C.A. 9), certiorari denied, 393 U.S. 845; *Kidd* v. *United States*, 386 F. 2d 422, 423 (C.A. 10); *United States* v. *Kurki*, 384 F. 2d 905, 907 (C.A. 7), certiorari denied, 390 U.S. 926. Unlike the cases on which petitioner places principal reliance (Pet. 10), we do not deal here with erroneous advice given by a member of the board or by the clerk that caused him not to pursue his claim for exemption within the administrative process. See *United States* v. *Lansing*, 424 F. 2d 225 (C.A. 9).[5]

2. Over a year after petitioner committed the offense which serves as a basis for his conviction, this Court decided *Welsh*. In that case, a plurality of the Court for the first time construed the phrase "religious training and belief" to include deeply held moral and ethical beliefs (398 U.S. at 340), and beliefs "founded to a substantial extent upon considerations of public policy" (398 U.S. at 342).[6]

While that ruling has no direct bearing on the issue

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classification despite the ready availability of information and advice at the local board."

[5] Here, the clerk, when asked by petitioner how the board construed the statutory language, quite properly replied that she was unqualified to answer the question, that it would have to be answered by the board (Tr. 69).

[6] Even after *Welsh*, the questions in the form involved here track the statutory language that was subject to interpretation by this Court. If the congressional language is constitutional, questions drawn from it can hardly be inappropriate.

in this case, we point out that Selective Service has undertaken to revise its Special Form for Conscientious Objectors (SSS Form 150) to be more fully responsive to the principles enunciated by a plurality of the Court in *Welsh*. A copy of the revised form is reproduced in the Appendix *infra*, pp. 9-18. Consequently, there seems little likelihood that the issue raised in this petition in the *Seeger* context will arise in future cases under *Welsh*.

It is therefore respectfully submitted that the petition for a writ of certiorari should be denied.

ERWIN N. GRISWOLD,
Solicitor General.

NOVEMBER 1971.

Appendix

Special Form for Conscientious Objectors

Date Questionnaire Received at Local Board

Local Board Stamp

Date of Mailing _____

Complete and Return Before _____

1. Name of Registrant _____

2. Selective Service Number _____

3. Mailing Address _____

Instructions

A registrant who claims to be a conscientious objector shall offer information in substantiation of his claim on this special form which, when filed, shall become a part of his Classification Questionnaire (SSS Form 100). It is suggested that you read the pamphlet "CO", available at any office of the Selective Service System, before you complete this form.

> Section 6(j) of the Military Selective Service Act provides: "Nothing contained in this title shall be construed to require any person to be subject to combatant training and service in the armed forces of the United States who, by reason of religious training and belief, is conscientiously opposed to participation in war in any form. As used in this subsection, the term 'religious training and belief' does not include essentially political, sociological, or philosophical views, or a merely personal moral code. Any person claiming exemption from

combatant training training and service because of such conscientious objections whose claim is sustained by the local board shall, if he is inducted into the armed forces under this title, be assigned to noncombatant service as defined by the President, or shall, if he is found to be conscientiously opposed to participation in such noncombatant service, in lieu of such induction, be ordered by his local board, subject to such regulations as the President may prescribe, to perform for a period equal to the period prescribed in section 4(b) such civilian work contributing to the maintenance of the national health, safety, or interest as the Director may deem appropriate and any such person who knowingly fails or neglects to obey any such order from his local board shall be deemed, for the purposes of section 12 of this title, to have knowingly failed or neglected to perform a duty required of him under this title. The Director shall be responsible for finding civilian work for persons exempted from training and service under this subsection and for the placement of such persons in appropriate civilian work contributing to the maintenance of the national health, safety, or interest."

Selective Service Form 150 (Revised)

Section I—Claim for Exemption

Instructions—Sign your name to either statement A or B of this section. If you cannot sign either one, indicate why.

A. I am conscientiously opposed to participation in war in any form. I hold moral, ethical, or

religious beliefs which prevent my participating in war in any form. My conscience would not permit any acts which are inconsistent with these beliefs. I therefore claim exemption from combatant training and service in the armed forces, but I am willing to serve in a noncombatant capacity if called. (Registrants granted this status are classified 1-A-O.)

_____

Signature

B. I am conscientiously opposed to war in any form and to any participation in training and service in any organization engaged in war or preparation for war. I hold moral, ethical, or religious beliefs which prevent my participating in war in any form. My conscience would not permit any acts which are inconsistent with these beliefs. I therefore claim exemption from both combatant and noncombatant training and service in the armed forces, but I realize I am subject to perform two years alternate service if called. (Registrants granted this status are classified (1-O.)

_____

Signature

Section II—Training and Belief

Instructions—To qualify for conscientious objector classification, you must present convincing information to your local board concerning your beliefs. The questions below are intended to give you a frame-

work in which to state the facts and describe the beliefs which are the basis for your conscientious objector claim. Although you are not required to answer each of the questions, it is suggested that you give all of them serious consideration and that you answer concisely, honestly, and, where possible, with factual substantiation. These questions are not to be regarded as inclusive [*sic*], and you may include other information which you believe will be of assistance to your local board. If necessary, continue your answer to any question on another sheet of paper but please make your answers as concise as possible so that the board may be able to understand more precisely your beliefs.

1. You are entitled to one personal appearance before your local draft board. Do you desire to exercise your right for your personal appearance before the board acts upon your claim for conscientious objection, or do you prefer to let this form and the file stand upon its merits and exercise your right to a personal appearance after the classification in the event the board's action is not favorable to your claim?
2. Briefly describe your beliefs which are the basis for your request for conscientious objector status.

3. Have you acquired these beliefs through traditional religious training or experience? (If your answer is yes, please answer questions 3*a* through 3*f*.) Yes —— No ——

   a. How and when did you acquire these beliefs?
   b. Are you member, or have you been a member, of a church, synagogue, or religious sect or organization?

c. For how long have you been a member? (Please offer the board some evidence of membership or active participation.)

d. Describe the training or experience by which you have acquired your ideas.

e. Do you disagree with the teachings of your church, synagogue, or religious sect as they relate to conscientious objection? Please explain.

f. If your claim is based on the beliefs of a certain church or religion, indicate those teachings or beliefs of the church or religion which have influenced your opposition to participation in war.

4. Have you acquired these beliefs outside a traditional religious experience or training? (If your answer to this question is yes, please answer questions 4*a* through 4*f*): Yes —— No——

a. How did you gain these beliefs, and how long have you held your beliefs?

b. Do you continue the training activity which resulted in your beliefs?

c. Have you ever been a member of a church, synagogue, or religious sect or organization?

d. If so, have you rejected the beliefs upon which that membership rested? Why?

e. Demonstrate to the board that your beliefs are more than a personal moral code. Are they held by others?

f. If your beliefs originated as a result of some sudden occurrence, event or educational experience, describe the nature of the event or occurrence and how it has influenced your beliefs.

5. The opinion of the Supreme Court in the *Seeger* case of 1965 has set forth the requirement that all sincere beliefs of conscientious objection that are valid under the law must be "based upon a power or being, or upon a faith, to which all else is subordinate or upon which all else is ultimately dependent". In the *Welsh* case of 1970 the Court expanded the ruling to include *deeply held* moral and ethical beliefs. Tell how and for how long your beliefs, thus, are and have been the controlling force in your life by:

   a. Describing those acts and expressions, public or private, which you feel demonstrate the depth, sincerity and consistency of your views on conscientious objection.
   b. Describing any positive actions on your part that would demonstrate the strength of your views.
   c. Stating what commitments, if any, you have made toward your future life which would demonstrate the strength of your convictions.
   d. Explaining how your conscientious objector beliefs, however founded, control and guide your life style with a degree of rigor similar to that of traditionally religious persons who would qualify for conscientious objection.

6. Please demonstrate how you can be certain that you are opposed to war in any form by your answers to the following questions:

   a. Do you believe that a nation or society has a right to defend itself against attack?
   b. If so, is it acceptable to you for that nation to

compel its members, other than conscientious objectors, to bear arms in the common defense?

c. If not, what obligations do you believe an individual owes to a society seeking to preserve itself?

d. If the nation were attacked, and you declined to participate in its defense, how can you be certain that you would decline to assist the military forces as a medical aide or other noncombatant?

e. A person's willingness to defend himself, members of his family, or his immediate associates may be consistent with a valid claim for conscientious objection. Are there any other instances in which you believe that forceful acts on your part are justified?

f. Have you ever been convicted of a crime involving physical force or violence? If so, please explain the circumstances to the board.

g. Have you ever been employed in a job or by an organization which contributed to the nation's military activities? If so, explain this to the board.

h. Explain how you can be reasonably certain that personal fear of death, injury, or military discipline is not the most influential factor in your claim for conscientious objection.

7. A man who has a valid claim for conscientious objection may have serious reservations about his nation's political or sociological policies. If you have such reservations, how can you be certain that they have not been the primary reason guiding you to make the claim of conscientious objection?

Section III—References

You may provide your local board with any additional evidence from any source that would support your claim of conscientious objection. You may, if you choose, provide in the space below the names of references who could provide the local board with information regarding your training and belief. To make your case stronger you should secure documents supporting your claim from these individuals. The documents should be sent to the local board and will be included in your selective service file.

NAME FULL ADDRESS	OCCUPATION OR POSITION	RELATIONSHIP TO YOU

Registrant's Certificate

Instructions—Every registrant claiming to be a conscientious objector shall make this certificate.

Notice—Imprisonment for not more than 5 years or a fine of not more than $10,000, or both fine and imprisonment, is provided by law as a penalty for knowingly making or being a party to the making of any false statement or certificate regarding or bearing upon a classification. (Military Selective Service Act).

I, ————, certify that I am the registrant named and described in the foregoing statements in this form; that I have read (or have had read to me) the statements made by and about me, and that each and every such statement is true and complete to the best of my knowledge, information, and belief. The statements made by me in the foregoing ———— in my own handwriting. (are, are not)

Registrant sign here

_____

(Signature or mark of registrant)

_____ _____

(Signature of witness to mark of registrant) (Date)

_____

(Date)

If another person has assisted the registrant in completing this form, such person shall sign the following statement:

I have assisted the registrant herein named in completing this form.

(Signature of person who has assisted)

(Occupation of person who has assisted)

(Address of person who has assisted)

(Date)

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